

ORIGINAL



0000078695

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

28

**COMMISSIONERS**

MIKE GLEASON – Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

2007 NOV 20 A 10:49

AZ CORP COMMISSION  
DOCKET CONTROL

ARIZONA WATER COMPANY, an Arizona  
corporation,

Complainant,

vs.

GLOBAL WATER RESOURCES, LLC, a foreign  
limited liability company; GLOBAL WATER  
RESOURCES, INC., a Delaware corporation;  
GLOBAL WATER MANAGEMENT, LLC, a  
foreign limited liability company; SANTA CRUZ  
WATER COMPANY, LLC, an Arizona limited  
liability corporation; PALO VERDE UTILITIES  
COMPANY, LLC, an Arizona limited liability  
corporation; GLOBAL WATER – SANTA CRUZ  
WATER COMPANY, an Arizona corporation;  
GLOBAL WATER – PALO VERDE UTILITIES  
COMPANY, an Arizona corporation; JOHN AND  
JANE DOES 1-20; ABC ENTITIES I – XX,

Respondents.

DOCKET NO. W-01445A-06-0200  
SW-20445A-06-0200  
W-20446A-06-0200  
W-03576A-06-0200  
SW-03575A-06-0200

**REPLY IN SUPPORT OF CROSS-  
MOTION TO COMPEL**

**(expedited ruling requested)**

**(Procedural conference November  
20, 2007 1:30 p.m.)**

Arizona Corporation Commission  
**DOCKETED**

NOV 20 2007

DOCKETED BY

nr

Respondents (collectively “Global”) respectfully reply in support of their cross-motion to compel. Although most of the discovery disputes have now been resolved, one important dispute remains. That dispute concerns whether Arizona Water Company (“AWC”) must provide access to certain financial information, when AWC has sought and received access to the same information from Global.

1 **I. Cross-Motion to Compel.**

2 **A. AWC has not responded to Global 1.55.**

3 During the August 14, 2007 procedural conference, Judge Nodes granted Global's cross-  
4 motion to compel regarding the following data requests: Global 1.53, 1.55, and 1.71, and 3.2.<sup>1</sup>  
5 AWC has not provided any further response to Global 1.55 after August 14. Thus, AWC has  
6 clearly not complied with the AJL's order to compel a further answer to Global 1.55.

7 AWC does not deny that it has provided no additional information after the Judge Node's  
8 ruling on August 14. Instead, AWC points to its response in October 2006. Global 1.55 requested  
9 that AWC "indicate the sources of equity available to AWC." AWC responded on October 11,  
10 2006 that the "available sources of equity are retained earnings and paid-in-capital" (attached as  
11 Exhibit A). This is simply a recitation of the definition of equity, and provides no information  
12 about AWC or its actual sources of financing. AWC's October 2006 response remains inadequate,  
13 as evidenced by Judge Node's granting of the motion to compel in August 2007.

14 AWC conducted its investigation into Global's sources of equity through an 8 day on-site  
15 audit of the financial and accounting records of Global's regulated utilities and its unregulated  
16 parent companies and affiliates. Likewise, Global should be able to investigate AWC's sources of  
17 equity in the same manner thorough an on-site audit of the financial and accounting records of  
18 AWC and its affiliates.

19 **B. Discovery covers both the complaint and CC&N dockets.**

20 AWC argues that discovery regarding its financial and accounting records (and those of its  
21 affiliates) is not relevant to this docket. But all parties have agreed that discovery in this complaint  
22 case (06-0200) and the related CC&N docket (06-0199) should be combined. Thus, in ruling on  
23 the original cross-motions to compel in August, Judge Nodes looked to both cases to determine  
24 relevance. Applying that same principle here leads strongly to the conclusion that Global should  
25 be provided the same access to AWC's records that Global allowed for its own records.

26  
27 

---

<sup>1</sup> August 14, 2007 Tr. at 83-84, 90.

1 This point was extensively discussed during the procedural conference on August 14.  
2 Global's counsel argued that "if parent-level financial dealings and interrelationships and those  
3 types of things are relevant to choosing between competing providers, then both of the competing  
4 providers should have access to that information and the ability to conduct discovery on it...."<sup>2</sup>  
5 AWC responded, as it does again here, that such matters are relevant as to Global's information  
6 but not relevant for AWC's information. Judge Nodes rejected AWC's argument, stating that "it  
7 really does seem to me that at least for the CC&N proceeding -- and I might buy your argument if  
8 this were solely related to the complaint proceeding... -- but with respect to the CC&N  
9 proceeding, it seems like you are trying to have it both ways."<sup>3</sup> Thus, Judge Nodes ruled that "if  
10 you're being allowed to make those inquiries, it seems to me equally fair, subject to an appropriate  
11 protective order, that Arizona Water would be subject to the same type of discovery. So I will  
12 grant the motion to compel on 1.53, 1.55."<sup>4</sup> A copy the transcript (pages 79-84) is attached as  
13 Exhibit B.

14 Thus, Judge Nodes established that relevance would be determined by looking at both the  
15 complaint docket and the CC&N docket. Moreover, Judge Nodes determined that discovery  
16 would be reciprocal for such financial issues. Here, Global simply seeks the same type of  
17 discovery that AWC has already conducted on Global.

18 **C. AWC's financial information is relevant.**

19 AWC argues that tracing the inflow and outflow of funds between Global Water  
20 Resources, LLC ("Global Parent") and the regulated utilities is relevant to proving that the ICFAs  
21 are illegal and that Global Parent is acting as a public service corporation. AWC's arguments are  
22 premised on the flow of funds within Global being atypical. Thus, if the flow of funds between  
23 AWC and its affiliates shares similar characteristics, it would be difficult for AWC to prove its  
24 claim that Global's structure is atypical. Therefore, an examination of the financial information of

25 \_\_\_\_\_  
26 <sup>2</sup> August 14, 2007 Tr. at 79:18-20.

27 <sup>3</sup> August 14, 2007 Tr. at 83:6-12.

<sup>4</sup> August 14, 2007 at 83:17-20.

1 AWC and its affiliates is warranted and is likely to lead to the discovery of relevant evidence in the  
2 complaint case. And, an examination of the finances of AWC and its affiliates is highly relevant  
3 in choosing between competing utilities in the contested CC&N case.

4 Likewise, AWC points to the relationship between Global Water Management, LLC  
5 ("Global Management") and Global's regulated utilities as proof of some sort of improper  
6 conduct. Yet discovery provided by AWC reveals that it too has business dealings with an affiliate  
7 known as Rosemead Properties. (A chart showing AWC's corporate structure is attached as  
8 Exhibit C). If AWC's relationship with Rosemead is similar to the relationship of the Global  
9 Utilities to Global Management, then again AWC's claims that Global's structure is atypical  
10 would be rebutted. Thus, such matters are discoverable in the complaint proceeding. Moreover,  
11 the California Public Utilities Commission has fined AWC's sister company for improper dealings  
12 with this same affiliate, Rosemead.<sup>5</sup> The CPUC was highly critical of the executives of AWC's  
13 sister company and the holding company that also controls AWC. Given that AWC has a number  
14 of transactions with Rosemead, it is not unreasonable to look into AWC's records to see if AWC  
15 acted in the same fashion. Relationships with affiliates are clearly relevant to determining which  
16 entity is more "fit and proper" in the CC&N proceeding.

17 Finally, in addition to determining the actual sources of equity for AWC and potential  
18 affiliate profits, an examination of AWC's financial information is relevant to, as AWC asserts,  
19 whether it actually performs many of the tasks that Global parent performs pursuant to ICFA  
20 agreements and how those activities are accounted for such as billing services. These include how  
21 capital expenditures are financed, how overhead and common services are allocated and how  
22 funds from AWC's Master Facilities Agreements (the analog to Global's ICFAs) are accounted  
23 for.

24 Thus, financial issues to be examined in the proposed on-site audit are highly relevant to  
25 both the complaint docket and the CC&N docket.

26  
27 

---

<sup>5</sup> CPUC Decision 07-04-046 (April 12, 2007).

1  
2 **II. Response to Global 5.1.**

3 In addition to the issues raised in Global's cross-motion to compel, a new issue now exists  
4 that should be brought to the attention of the Administrative Law Judge. On Monday, November  
5 19, 2007, AWC provided its response to Global data request 5.1. (Attached as Exhibit D). This  
6 request asked for the opportunity to inspect the minute books of AWC and its affiliates. AWC had  
7 previously requested, and been granted, an inspection of the minute books of Global's regulated  
8 utilities and its unregulated corporations. AWC agreed to allow its minute books to be inspected,  
9 but rejected the request for affiliate minute books. Undersigned counsel has conferred with  
10 AWC's counsel over this issue and AWC's counsel confirms AWC's position that the minutes of  
11 AWC's affiliates are not relevant and should not be made available for review.

12 As with the financial issues discussed above, this should be a two-way street. AWC  
13 presumably sought to inspect Global's minute books to see whether corporate formalities are being  
14 observed, or to learn other information about the relationships between the Global entities. Such  
15 an examination would likely go towards AWC's "alter ego" theory in the complaint case, and its  
16 "not fit and proper" theory in the CC&N case. An examination of the minute books of AWC's  
17 affiliates is relevant for the same reasons.

18 **IV. Conclusion.**

19 Global's cross-motion to compel seeks the very same process that Global provided to  
20 AWC, at AWC's own request. The same is true of the requested inspection of minute books.  
21 AWC should not be able to "have it both ways," and the cross-motion should be granted.  
22  
23  
24  
25  
26  
27

1 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of November 2007.

2 ROSHKA DEWULF & PATTEN, PLC

3  
4 By 

5 John E. DeWulf

6 Michael W. Patten

7 Timothy J. Sabo

8 One Arizona Center

9 400 East Van Buren Street, Suite 800

10 Phoenix, Arizona 85004

11 Attorneys for Global

12 Original and 21 copies of the foregoing  
13 filed this 20<sup>th</sup> day of November 2007 with:

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

18 Copy of the foregoing hand-delivered/mailed  
19 this 20<sup>th</sup> day of November 2007 to:

20 Dwight D. Nodes, Esq.  
21 Assistant Chief Administrative Law Judge  
22 Hearing Division  
23 Arizona Corporation Commission  
24 1200 West Washington  
25 Phoenix, Arizona 85007

26 Christopher C. Kempley, Esq.  
27 Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Ernest G. Johnson, Esq.  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

ROSHKA DeWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Robert W. Geake, Esq  
2 Arizona Water Company  
3 3805 North Black Canyon Highway  
4 Phoenix, Arizona 85015  
5  
6 Steven A. Hirsch, Esq.  
7 Rodney W. Ott, Esq.  
8 Bryan Cave LLP  
9 Two North Central Avenue, Suite 2200  
10 Phoenix, Arizona 85004  
11

12 By *Leah Ann*  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT

" A "



**ARIZONA WATER COMPANY'S  
RESPONSE TO GLOBAL'S  
FIRST SET OF DATA REQUESTS (REVISED)  
(DOCKET NO. W-01445A-06-0199 ET AL.)**

**Data Request No. Global 1.54**

For each of the last three years, please provide the reports provided by AWC under A.A.C.R.14-2-805.

***Response to Data Request Global No 1.54***

Arizona Water Company objects to this Data Request on the grounds that it seeks reports and information that are confidential, and the Affiliated Interest Report required under R14-2-802 is not Public Information and, accordingly, the reports are not available for inspection.

Responder(s):      Ralph J. Kennedy

**Data Request No. Global 1.55**

Please indicate the sources of equity available to AWC.

***Response to Data Request Global No 1.55***

The available sources of equity are retained earnings and paid-in-capital.

Responder(s):      Ralph J. Kennedy

**Data Request No. Global 1.56**

Please provide a schedule showing all equity provided to AWC by shareholders in the last five years.

***Response to Data Request Global No 1.56***

A schedule showing shareholder provider equity over the last five years is attached.

Responder(s):      Ralph J. Kennedy

**Data Request No. Global 1.57**

Are the shareholders of AWC's ultimate parent company willing to pledge their personal credit for the benefit of AWC?

EXHIBIT

" B "

1 MR. SABO: Thank you, Your Honor.

2 As we discussed at the beginning of the day, I  
3 think the way we are approaching this matter is to rule  
4 not just with respect to the complaint docket but with  
5 respect to both dockets. And the data requests we have  
6 all been discussing here all relate -- originally were  
7 propounded in the CC&N proceeding.

8 It would certainly be our view that Arizona Water  
9 has repeatedly argued in the CC&N case that the structure  
10 of the parent companies and their financial condition and  
11 how they do things financially at the parent level and  
12 their financial soundness at the parent level are all  
13 issues that they have raised in their case and have sought  
14 discovery on those things in the CC&N case with respect to  
15 the Global parent entity, and those materials have now  
16 been compelled. Global has been compelled to provide  
17 those materials.

18 By the same token, if parent-level financial  
19 dealings and interrelationships and those types of things  
20 are relevant to choosing between competing providers, then  
21 both of the competing providers should have access to that  
22 information and the ability to conduct discovery on it and  
23 see whether there are materials there which would be  
24 something they would want to bring forward at hearing on  
25 the CC&N case, subject, of course, to the protective

1 order.

2 ALJ NODES: Sure.

3 Mr. Hirsch, putting aside the complaint  
4 proceeding, if, as Mr. Sabo indicates, Arizona Water is  
5 making the assertion regarding the corporate structure and  
6 financial issues related to the Global entities, why is it  
7 not equally subject to discovery on those topics in the  
8 CC&N proceeding?

9 MR. HIRSCH: Simply because your underlying  
10 supposition is a fiction. You can't separate the formal  
11 complaint and the concerns that drove the institution of  
12 the generic proceeding.

13 Arizona Water Company isn't subject to those  
14 concerns regarding its relationship to its affiliates.  
15 There is no basis to claim that it is being run in an  
16 alter-ego way or there are unregulated public service  
17 corporations that are somehow doing the business of  
18 Arizona Water Company. That is not even claimed in the  
19 certificate proceeding.

20 So it's just apples and oranges. When it comes  
21 down to fitness to serve and what is relevant before Judge  
22 Kinsey, which you are now ruling upon in the 0199  
23 proceeding, what is relevant has already been produced.  
24 The financial statements of Arizona Water Company have  
25 been produced, and there -- those make it clear that there

1 is no issue concerning unregulated PSCs providing utility  
2 and other ESC or public service corporation-like services  
3 to Arizona customers.

4 ALJ NODES: So is it your position that if the  
5 complaint case did not exist regarding the ICFAs, Arizona  
6 Water would not in the CC&N proceeding be seeking any  
7 information related to the parent, the Global parent and  
8 its related affiliates?

9 MR. HIRSCH: No, I'm not stating that.

10 We would because that is at issue, both as to  
11 fitness to serve, because the issues that have been raised  
12 in the formal complaint proceeding also go to fitness to  
13 serve.

14 But it doesn't flow the other way. There are no  
15 allegations in the certificate proceeding that Arizona  
16 Water Company somehow has parent companies that are  
17 providing utility services or are taking in ICFA moneys  
18 and flowing them through back downstream to the regulated  
19 utility. That is the difference between the two entities.

20 ALJ NODES: That is why I said if you exclude the  
21 complaint proceeding regarding the ICFAs, would Arizona  
22 Water still be making the same inquiries with Global with  
23 respect -- in the CC&N proceeding with respect to the  
24 capitalization of the parent with regard to inflow and  
25 outflow of funds to and from the parent entities?

1 MR. HIRSCH: As to the capitalization of the  
2 parent, probably not. But as to inflow and outgo, that is  
3 still relevant. Fitness -- because it goes to fitness to  
4 serve if there are violations of Commission rules and  
5 regulations by parents or affiliates.

6 ALJ NODES: So then why isn't Arizona Water  
7 equally susceptible to having discovery propounded upon it  
8 on those same types of issues?

9 MR. HIRSCH: Because for discovery to be  
10 propounded, there has to be -- it has to be either  
11 relevant or lead to the discovery of admissible evidence.  
12 And Arizona Water Company for 50 years has not been  
13 subject to the inquiries and the statements of issue  
14 concerning its affairs and whether or not it's in any way  
15 an unregulated utility.

16 That is not a relevant concern, whereas it is for  
17 the Global entities, the way they are structured. Arizona  
18 Water isn't structured that way.

19 ALJ NODES: Okay. Well -- but how is Global to  
20 know how Arizona Water is structured if it can't conduct  
21 discovery at the parent level on Arizona Water in order to  
22 make a finding or a showing of fit and proper?

23 MR. HIRSCH: Because all of the information it  
24 needs is shown by the information already disclosed at  
25 Arizona Water Company. Whereas when you do that to Santa

1 Cruz Water Company you get the responses that there are no  
2 employees and everything comes from an unregulated parent,  
3 such as Global Water Resources.

4 Do you see the distinction between the two?

5 ALJ NODES: Well, I see the distinction you are  
6 trying to draw. But it really does seem to me that at  
7 least for the CC&N proceeding -- and I might buy your  
8 argument if this were solely related to the complaint  
9 proceeding, which is -- the issue is more directly on the  
10 ICFAs and the funding related to those -- but with respect  
11 to the CC&N proceeding, it seems like you are trying to  
12 have it both ways.

13 And I understand you are raising the  
14 interrelationship and allegations from the complaint and  
15 how they bleed over into the CC&N proceeding and there are  
16 no allegations regarding Arizona Water, et cetera. But,  
17 you know, if you're being allowed to make those inquiries,  
18 it seems to me equally fair, subject to an appropriate  
19 protective order, that Arizona Water would be subject to  
20 the same type of discovery.

21 So I will grant the motion to compel on 1.53,  
22 1.55.

23 On those two, this issue with -- and this issue,  
24 though, with the income tax returns, both federal and  
25 state, as well as insurance policies, Mr. Hirsch, you

1 indicated that those types of matters are not generally  
2 discoverable?

3 MR. HIRSCH: That is very much the law and we did  
4 not seek it of Global.

5 If we're going to disclose to each other the  
6 underlying financial statements and financial records,  
7 that should suffice.

8 ALJ NODES: Mr. Sabo?

9 MR. SABO: Your Honor, if we have Mr. Hirsch's  
10 commitment that they won't seek that information from --  
11 with respect to Global, we will withdrawal 1.66, 67 and  
12 70.

13 ALJ NODES: Okay. Let's see. 1.71, I guess that  
14 kind of ties -- I guess that ties into the 1.53, 1.55  
15 area. So I will grant motion to compel on 1.71 as well,  
16 subject to the protective order.

17 Okay. 1.78, projections on the extension area,  
18 Mr. Sabo, from what I understand of this, this is  
19 essentially what I denied the motion to compel on, which  
20 is kind of business plans or business models.

21 Is that consistent with your understanding as  
22 well?

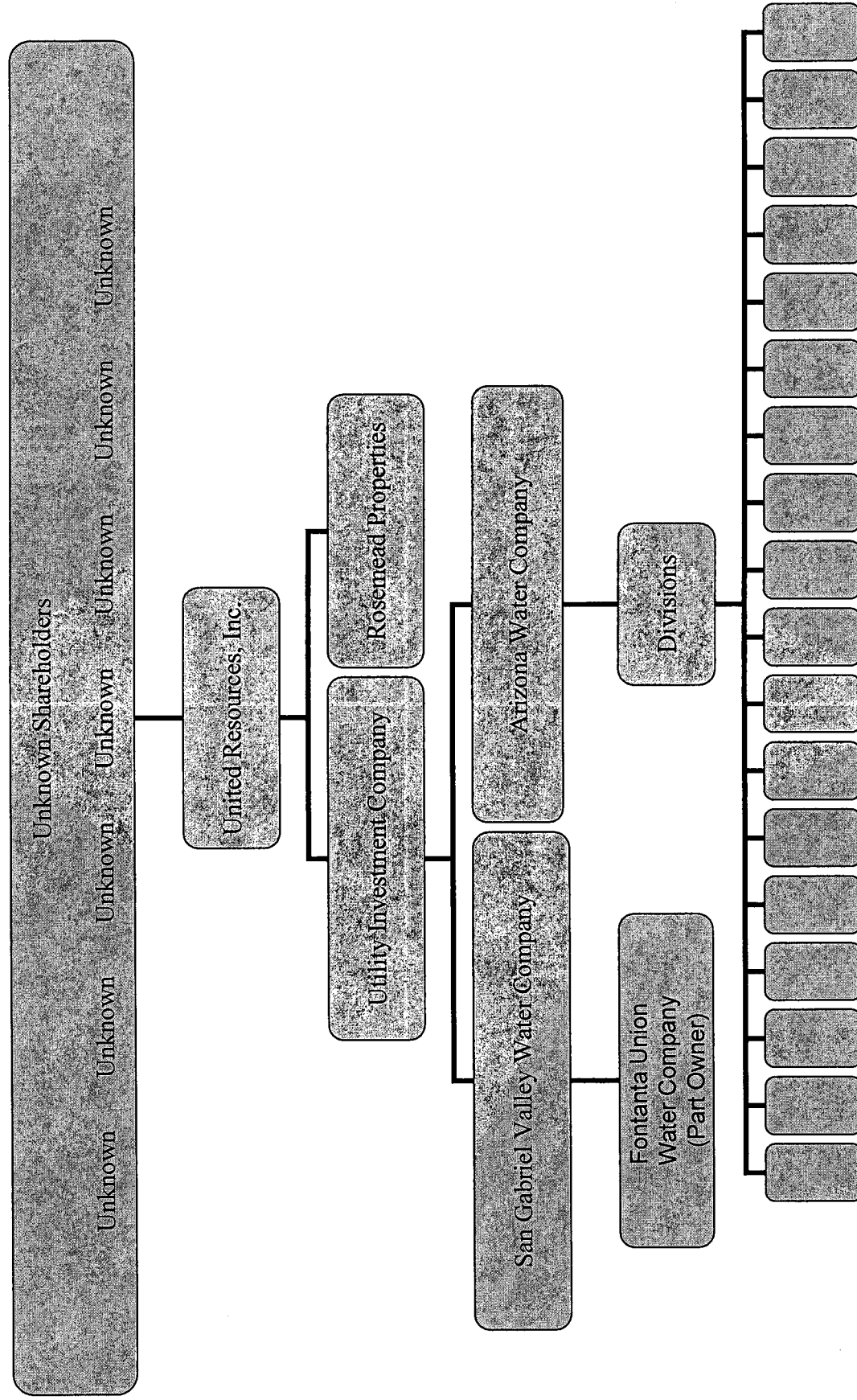
23 MR. SABO: Your Honor, I'm not sure. It is --  
24 from our standpoint it was similar to the question that  
25 Arizona Water Company asked with respect to their question



# EXHIBIT

" C "

# Arizona Water Company Corporate Structure



EXHIBIT

" D "

# ARIZONA WATER COMPANY

3805 N. BLACK CANYON HIGHWAY, PHOENIX, ARIZONA 85015-5351 • P.O. BOX 29006, PHOENIX, ARIZONA 85038-9006  
PHONE: (602) 240-6860 • FAX: (602) 240-6878 • WWW.AZWATER.COM

November 19, 2007

Timothy J. Sabo, Esq. (*tsabo@rdp-law.com*)  
Roshka DeWulf & Patten, PLC  
One Arizona Water  
400 E. Van Buren St., Suite 800  
Phoenix, AZ 85004-2262

Re: Arizona Water Company v. Global Water Resources, et al., Docket No. W-01445A-06-0200; SW-20445A-06-0200; W-20446A-06-0200; W-03576A-06-0200; SW-03575A-06-0200

Dear Tim:

Arizona Water Company's response to Global's Data Request 5.1 is enclosed.

Very truly yours,



Robert W. Geake  
Vice President and General Counsel

lar  
Enclosure

**ARIZONA WATER COMPANY'S  
RESPONSE TO GLOBAL'S  
FIFTH SET OF DATA REQUESTS**

**DOCKET NO. W-01445A-06-0199 ET AL  
AND  
DOCKET NO. W-01445A-06-0200 ET AL**

**Data Request No. Global 5.1**

Please provide an opportunity to inspect the minute books of Arizona Water Company and each affiliate of Arizona Water Company (as listed in Response to Global 1.3). The inspection should be similar in format to the inspection provided by Global to AWC in response to STF 3.2.

***Response to Data Request Global No 5.1***

Arizona Water Company will provide access to its minute books for the past twenty years. Arizona Water Company objects to providing access to the minutes of its affiliates on the grounds that they are not available to Arizona Water Company and on the grounds of lack of relevance.

Global may arrange for access to the Arizona Water Company minute books by calling Robert W. Geake, Vice President and General Counsel of the Company, to arrange a time.

Responder(s): William M. Garfield